

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARK CUMMINS FRAILEY,	)	
	)	Civil Action No. 06 - 47J
Plaintiff,	)	
	)	Judge Kim R. Gibson /
v.	)	Magistrate Judge Lisa Pupo
	)	Lenihan
CORRECTIONS OFFICER CHERYL	)	
CONSALVO; CORRECTIONS OFFICER	)	
JOHN DOE BRIAN HOOVER;	)	
CORRECTIONS OFFICER KORY	)	
O'DONNELL; CORRECTIONS OFFICER	)	
DONALD CARLES; CORRECTIONS	)	
OFFICER JOHN DOE #4; WARDEN	)	
DONALD OTT; SUPERVISOR SHIRLEY	)	
STAHLER; SUPERVISOR HOWARD	)	
HORTON; COUNSELOR ALEX ELYAR;	)	
ROGER FORR; BLAIR COUNTY PRISON	)	
BOARD OF BLAIR COUNTY PRISON,	)	

Defendants.

**ORDER**

The above captioned case was initiated by the filing of a Motion to Proceed *In Forma Pauperis* (Doc. No. 1) on February 28, 2006 and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On November 10, 2006, Defendants filed a Motion to Dismiss Plaintiff's Complaint (doc. no. 19). The Magistrate Judge's Report and Recommendation (doc. no. 26), filed on May 31, 2007, recommended that Defendants' Motion to Dismiss be denied. All parties were served with the Report and Recommendation and

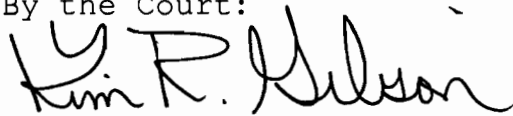
advised they were allowed ten (10) days from the date of service to file written objections to the Report and Recommendation. No objections have been filed. After review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

**AND NOW**, this 11<sup>th</sup> day of July, 2007;

**IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (doc. no. 19) is **DENIED** and the matter is referred back to Magistrate Judge Lisa Pupo Lenihan for further pre-trial proceedings.

**IT IS FURTHER ORDERED** that the Report and Recommendation (doc. no. 26) of Magistrate Judge Lenihan, dated May 31, 2007, is adopted as the opinion of the court.

By the Court:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

Kim R. Gibson  
United States District Judge

cc: Lisa Pupo Lenihan  
United States Magistrate Judge

Mark Cummins Frailey  
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